

House File 2393 - Introduced

HOUSE FILE 2393
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 596)

A BILL FOR

1 An Act relating to real estate appraisal, including by
2 requiring the superintendent of banking to regulate
3 appraisal management companies and supervise the Iowa real
4 estate appraiser board, making penalties applicable, and
5 including effective date provisions.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

APPRAISAL MANAGEMENT COMPANIES

Section 1. NEW SECTION. 543E.1 Short title.

This chapter shall be known and may be cited as the "*Iowa Appraisal Management Company Registration and Supervision Act*".

Sec. 2. NEW SECTION. 543E.2 Purpose and scope.

The purpose of this chapter is to protect the independence and integrity of the appraisal process when an appraisal is provided through an appraisal management company in connection with a consumer credit transaction secured by the principal dwelling of an Iowa consumer or securitization of such a transaction.

Sec. 3. NEW SECTION. 543E.3 Definitions.

Unless the context otherwise requires, the definitions contained in section 543D.2 shall apply to this chapter. In addition, the following definitions shall apply for purposes of this chapter:

1. "*Administrator*" means the superintendent of the division of banking of the department of commerce or the superintendent's designee.

2. "*Appraisal management company*" means a person that oversees an appraiser panel of more than fifteen certified appraisers in this state or twenty-five or more certified or licensed appraisers nationally within a year, and that directly or indirectly performs appraisal management services for creditors or secondary mortgage market participants in connection with consumer credit transactions secured by the principal dwellings of Iowa consumers or securitizations of those transactions.

3. "*Appraisal management services*" means any of the following:

- a. Recruiting, selecting, and retaining appraisers.
- b. Contracting with state certified or licensed appraisers to perform appraisal assignments.
- c. Managing the process of having an appraisal performed,

1 including providing administrative services such as receiving
2 appraisal orders and appraisal reports, submitting completed
3 appraisal reports to creditors and secondary mortgage market
4 participants, collecting fees from creditors and secondary
5 mortgage market participants for services provided, and paying
6 appraisers for services performed.

7 *d.* Reviewing and verifying the work of appraisers.

8 4. "*Appraisal review*" means developing and communicating an
9 opinion under the uniform standards of professional appraisal
10 practice review standards regarding the quality of another
11 appraiser's work product prepared as part of an appraisal
12 assignment. An "*appraisal review*" does not include quality
13 control solely to assure an appraisal report is complete, or to
14 correct grammatical, typographical, or other similar errors.

15 5. "*Appraisal subcommittee*" means the appraisal subcommittee
16 of the federal financial institutions examination council.

17 6. "*Appraiser*" means a person who holds a certificate as a
18 certified real estate appraiser issued under chapter 543D.

19 7. "*Appraiser panel*" means a network, list, or roster of
20 certified appraisers who are independent contractors with
21 an appraisal management company and who have been selected
22 and approved by the appraisal management company to perform
23 appraisals directly for the appraisal management company or
24 for persons that have ordered appraisals through the appraisal
25 management company. Appraisers on an appraisal management
26 company's appraiser panel may include both appraisers engaged
27 to perform one or more appraisals for covered transactions or
28 for secondary mortgage market participants in connection with
29 covered transactions, and appraisers accepted by the appraisal
30 management company for consideration for future appraisal
31 assignments for such purposes, as the administrator may further
32 provide by rule.

33 8. "*Associate real estate appraiser*" means a person who is
34 registered with the Iowa real estate appraiser examining board
35 under section 543D.20.

1 9. "*Consumer credit*" means credit offered or extended to a
2 consumer primarily for personal, family, or household purposes.

3 10. "*Controlling person*" means any of the following:

4 a. An owner, officer, or director of an appraisal management
5 company.

6 b. An individual employed, appointed, or authorized by
7 an appraisal management company who has the authority to
8 enter into a contractual relationship with other persons for
9 the performance of appraisal management services or has the
10 authority to enter into agreements with appraisers for the
11 performance of appraisals.

12 c. An individual who possesses, directly or indirectly, the
13 power to direct or cause the direction of the management or
14 policies of an appraisal management company.

15 11. "*Covered transaction*" means any consumer credit
16 transaction secured by the consumer's principal dwelling.

17 12. "*Creditor*" means a person who regularly extends consumer
18 credit that is subject to a finance charge or is payable by
19 written agreement in more than four installments, not including
20 a down payment, and to whom the obligation is initially
21 payable, either on the face of the note or contract, or by
22 agreement when there is no note or contract. For purposes of
23 this subsection, a person "regularly extends consumer credit"
24 if the person extended credit, other than credit subject to
25 the requirements of 12 C.F.R. §1026.32, more than five times
26 in the preceding calendar year for transactions secured by a
27 dwelling. If a person did not meet those numerical standards
28 in the preceding calendar year, the numerical standards
29 shall be applied to the current calendar year. A person also
30 "regularly extends consumer credit" if, in any twelve-month
31 period, the person originates more than one credit extension
32 that is subject to the requirements of 12 C.F.R. §1026.32 or
33 one or more such credit extensions through a mortgage broker.

34 13. "*Dwelling*" means a residential structure that contains
35 one to four units, whether or not that structure is attached to

1 real property. *"Dwelling"* includes an individual condominium
2 unit, cooperative unit, mobile home, and trailer, if it is used
3 as a residence.

4 14. *"Federally regulated appraisal management company"* means
5 an appraisal management company that is owned and controlled
6 by an insured depository institution, as defined in 12 U.S.C.
7 §1813 and regulated by the office of the comptroller of the
8 currency, the board of governors of the federal reserve system,
9 or the federal deposit insurance corporation.

10 15. *"Federally related transaction regulations"* means
11 regulations established by the comptroller of the currency, the
12 board of governors of the federal reserve system, the federal
13 deposit insurance corporation, or the national credit union
14 administration pursuant to sections 1112, 1113, and 1114 of
15 Tit. XI of the federal Financial Institutions Reform, Recovery,
16 and Enforcement Act, 12 U.S.C. §§3341-3343.

17 16. *"National registry"* means the registry of
18 state-registered appraisal management companies and federally
19 regulated appraisal management companies maintained by the
20 appraisal subcommittee.

21 17. *"Nonsubstantive reason"* means a reason not described in
22 section 543E.17 to constitute grounds for disciplinary action,
23 including but not limited to the failure to pay appropriate
24 fees.

25 18. *"Person"* means as defined in section 4.1.

26 19. *"Principal dwelling"* means the primary residence of a
27 consumer. For purposes of this chapter, a consumer may have
28 only one *"principal dwelling"*. A vacation or other second home
29 shall not be considered a *"principal dwelling"*. However, if
30 a consumer buys or builds a new dwelling that will become the
31 consumer's primary residence within a year or upon completion
32 of the construction, the new residence is considered the
33 *"principal dwelling"* for purposes of this chapter.

34 20. *"Secondary mortgage market participant"* means a guarantor
35 or insurer of mortgage-backed securities, or an underwriter

1 or issuer of mortgage-backed securities. "*Secondary mortgage*
2 *market participant*" only includes an individual investor in a
3 mortgage-backed security if that investor also serves in the
4 capacity of a guarantor, insurer, underwriter, or issuer for
5 the mortgage-backed security.

6 21. "*States*" means the fifty states of the United States,
7 the District of Columbia, and the territories of American
8 Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the
9 United States Virgin Islands.

10 22. "*Substantive reason*" means a reason specified in section
11 543E.17 as constituting grounds for disciplinary action.

12 23. "*Uniform standards of professional appraisal practice*"
13 means the uniform standards promulgated by the appraisal
14 standards board of the appraisal foundation.

15 Sec. 4. NEW SECTION. 543E.4 **Registration required.**

16 A person shall not directly or indirectly engage in or
17 attempt to engage in business as an appraisal management
18 company or advertise or hold itself out as engaging in or
19 conducting business as an appraisal management company in this
20 state without first registering with the administrator.

21 Sec. 5. NEW SECTION. 543E.5 **Exemptions.**

22 This chapter shall not apply to any of the following:

23 1. A person that exclusively employs appraisers on an
24 employer and employee basis for the performance of appraisals.

25 2. A government body, as defined in section 22.1, subsection
26 1, that performs appraisals or retains appraisers on behalf of
27 the government body.

28 3. A federally regulated appraisal management company.

29 4. A department or division of an entity that provides
30 appraisal management services only to that entity.

31 Sec. 6. NEW SECTION. 543E.6 **Ownership — restrictions and**
32 **requirements.**

33 1. An appraisal management company registered or applying
34 for registration in this state shall not be directly or
35 indirectly owned in whole or in part by a person who has had a

1 license or certificate to act as an appraiser refused, denied,
2 canceled, revoked, or surrendered in lieu of revocation in
3 any state for a substantive reason. An appraisal management
4 company may be directly or indirectly owned in whole or in part
5 by a person who has had a license or certificate to act as an
6 appraiser refused, denied, canceled, revoked, or surrendered
7 in lieu of revocation in a state for a nonsubstantive reason
8 if the license or certificate was subsequently granted or
9 reinstated.

10 2. A person who directly or indirectly owns more than ten
11 percent of an appraisal management company in this state shall
12 be of good moral character, as prescribed by rules adopted by
13 the administrator consistent with applicable federal law and
14 regulations, and shall submit to a background investigation,
15 as prescribed by rules adopted by the administrator consistent
16 with applicable federal law and regulations.

17 Sec. 7. NEW SECTION. 543E.7 Designation of controlling
18 person.

19 1. An appraisal management company registered or applying
20 for registration in this state shall designate a controlling
21 person who shall be the main contact for all communications
22 between the administrator and the appraisal management company,
23 and who shall be responsible for assuring the appraisal
24 management company complies with the provisions of this chapter
25 when performing appraisal management services in connection
26 with real estate located in this state.

27 2. The designated controlling person shall not have had a
28 license or certificate to act as an appraiser refused, denied,
29 canceled, revoked, or surrendered in lieu of revocation in
30 any state for a substantive reason. A designated controlling
31 person may have had a license or certificate to act as an
32 appraiser refused, denied, canceled, revoked, or surrendered
33 in lieu of revocation in a state for a nonsubstantive reason
34 if the license or certificate was subsequently granted or
35 reinstated.

1 3. The designated controlling person shall be of good moral
2 character, as prescribed by rules adopted by the administrator
3 consistent with applicable federal law and regulations, and
4 shall submit to a background investigation, as prescribed by
5 rules adopted by the administrator consistent with applicable
6 federal law and regulations.

7 Sec. 8. NEW SECTION. **543E.8 Registration — application**
8 **requirements.**

9 1. An application for registration as an appraisal
10 management company shall be submitted on a form prescribed by
11 the administrator.

12 2. An application shall at a minimum include the following:

13 a. The name, form of business entity, contact information,
14 and official domicile of the applicant.

15 b. The names and contact information for all persons
16 who directly or indirectly own more than ten percent of the
17 applicant and for the controlling person designated pursuant
18 to section 543E.7, and such additional information the
19 administrator may need to enforce section 543E.6, subsection 1.

20 c. Information as reasonably necessary to establish the size
21 of the applicant's nationwide and Iowa appraiser panels, in
22 accordance with rules adopted by the administrator.

23 d. Certification that the applicant does all of the
24 following:

25 (1) Verifies that appraisers who perform appraisal
26 assignments concerning real estate located in this state hold a
27 valid, unexpired certificate in good standing as a real estate
28 appraiser issued under chapter 543D.

29 (2) Requires that appraisals provided or coordinated by the
30 applicant comply with the uniform standards of professional
31 appraisal practice and has a system in place to monitor such
32 compliance.

33 (3) Maintains a system to assure that appraisal
34 management services are performed independently and free from
35 inappropriate influence and coercion pursuant to the appraisal

1 independence standards established under section 129E of the
2 federal Truth in Lending Act, including the requirements for
3 the payment of reasonable and customary fees, and pursuant to
4 section 543D.18, subsections 1 and 2, and section 543D.18A.

5 (4) Maintains a system to retain detailed records of all
6 appraisal management services to be performed in this state.

7 (5) Maintains a system to assure that the appraiser selected
8 for an appraisal assignment is independent of the transaction
9 and has the requisite education, expertise, and experience
10 necessary to competently complete the appraisal assignment for
11 the particular market and property type.

12 e. If the applicant is not domiciled in this state, the name
13 and contact information for the applicant's agent for service
14 of process in this state and consent to service of process upon
15 the secretary of state in any action or proceeding against the
16 applicant arising out of a transaction or operation connected
17 with or incidental to services performed by the applicant as
18 a registered appraisal management company in this state or
19 involving real property located in this state.

20 f. Any additional information that is reasonably needed for
21 the administrator to implement the provisions of this chapter
22 and assure that the applicant is eligible for registration
23 under this chapter.

24 Sec. 9. NEW SECTION. 543E.9 Registration renewal and annual
25 certification.

26 1. A registration issued under this chapter shall be valid
27 for one year as provided by rule.

28 2. An application to renew registration shall be submitted
29 in the form and in the manner prescribed by the administrator.
30 The administrator may further require periodic disclosures of
31 changes impacting registration, such as a change in ownership
32 or the designated controlling person.

33 3. An application to renew registration shall contain the
34 information described in section 543E.8, subsection 2.

35 4. A registration issued under this chapter shall lapse if

1 not timely renewed, in accordance with rules adopted by the
2 administrator.

3 5. A person holding a lapsed registration shall not directly
4 or indirectly engage in or attempt to engage in business as an
5 appraisal management company or advertise or hold itself out as
6 engaging in or conducting business as an appraisal management
7 company in this state until the registration has been
8 reinstated under the process prescribed by the administrator
9 by rule.

10 Sec. 10. NEW SECTION. 543E.10 Fees.

11 1. The administrator shall by rule establish fees for
12 registration, renewal, reinstatement, and such additional fees
13 as are reasonably necessary for the administration of this
14 chapter. The fees shall be established in consideration of
15 the costs of administering this chapter and the actual cost
16 of the specific service to be provided or performed. The
17 administrator shall periodically review and adjust the schedule
18 of fees as needed to cover projected expenses.

19 2. Except as provided in subsection 3, all fees collected
20 under this chapter shall be deposited into the department of
21 commerce revolving fund created in section 546.12 and are
22 appropriated to the administrator to be used to administer
23 this chapter including but not limited to purposes such as
24 examinations, investigations, and administrative staffing.
25 Notwithstanding section 8.33, moneys appropriated pursuant to
26 this subsection are not subject to reversion to the general
27 fund of the state.

28 3. The administrator shall also collect the national
29 registry fee from each appraisal management company seeking
30 to register in this state and from federally regulated
31 appraisal management companies operating in this state. The
32 administrator shall transfer all national registry fees
33 collected by the administrator to the appraisal subcommittee.

34 Sec. 11. NEW SECTION. 543E.11 Appraiser, appraisal review,
35 and employee restrictions.

1 1. The following individuals shall not have had a license or
2 certificate to act as an appraiser refused, denied, canceled,
3 revoked, or surrendered in lieu of revocation in any state
4 for a substantive reason, but may have had a license or
5 certificate to act as an appraiser refused, denied, canceled,
6 revoked, or surrendered in lieu of revocation in a state for
7 a nonsubstantive reason if the license or certificate was
8 subsequently granted or reinstated:

9 a. An appraiser in an appraisal management company's
10 appraiser panel who performs or may perform appraisals of real
11 estate located in this state.

12 b. An employee, independent contractor, or other agent of
13 an appraisal management company who performs or may perform an
14 appraisal review of an appraisal of real estate located in this
15 state.

16 c. An employee, independent contractor, or other agent
17 of an appraisal management company who does or may, with
18 respect to real estate located in this state, have any
19 responsibility for assigning appraisers to specific appraisal
20 assignments, providing quality control for appraisal reports,
21 or communicating with appraisers regarding potential appraisal
22 report deficiencies.

23 2. An appraiser who on behalf of an appraisal management
24 company performs or may perform an appraisal review of an
25 appraisal of a dwelling located in this state shall comply with
26 the review provisions of the uniform standards of professional
27 appraisal practice, and shall be certified as an appraiser
28 under the laws of any state, except that a review appraiser
29 shall be certified under chapter 543D if such certification
30 is required by any applicable state or federal law, rule, or
31 regulation, or to the extent the review appraiser provides
32 the review appraiser's own opinion of value, concurs with the
33 original appraiser's opinion of value, or disagrees with the
34 original appraiser's opinion of value.

35 3. An appraisal management company may rely on the national

1 registry for purposes of verifying compliance with this
2 section.

3 Sec. 12. NEW SECTION. **543E.12 Adherence to standards —**
4 **mandatory reporting.**

5 1. An appraisal management company shall direct all
6 appraisers it requests to perform appraisal assignments
7 involving real estate located in this state to comply with the
8 uniform standards of professional appraisal practice, including
9 the competency rule.

10 2. An appraisal management company shall have an appraisal
11 review system in place to monitor compliance with subsection 1.

12 3. An appraisal management company that has a reasonable
13 basis to believe an appraiser has materially failed to
14 comply with the uniform standards of professional appraisal
15 practice or has otherwise materially violated chapter 543D or
16 this chapter shall refer the matter to the administrator in
17 conformance with applicable federal law and regulations. An
18 appraisal management company that has a reasonable basis to
19 believe another appraisal management company is failing to
20 comply with the provisions of this chapter shall refer the
21 matter to the administrator in conformance with section 272C.9,
22 subsection 2.

23 4. An appraiser who is employed by or is on the appraiser
24 panel of an appraisal management company registered under this
25 chapter who has a reasonable basis to believe the appraisal
26 management company is in violation of this chapter shall refer
27 the matter to the administrator.

28 Sec. 13. NEW SECTION. **543E.13 Recordkeeping — payment.**

29 1. An appraisal management company shall maintain a
30 detailed record of each service request the appraisal
31 management company receives involving real estate located in
32 this state and the identity of the appraiser who performs the
33 appraisal assignment. All such records shall be maintained for
34 at least five years after the request is sent by the appraisal
35 management company to the appraiser or the completion of the

1 appraisal report, whichever period expires later. An appraisal
2 management company shall maintain such additional records
3 regarding appraisal management services performed in this state
4 as the administrator may specify by rule.

5 2. An appraisal management company shall, except in the
6 case of breach of contract or substandard performance of
7 an appraisal service, make payment to an appraiser for the
8 completion of an appraisal service within forty-five days
9 of the date on which the appraiser transmits or otherwise
10 provides the results of the completed appraisal service to the
11 appraisal management company. An appraisal management company
12 shall maintain detailed records to verify that all payments to
13 appraisers have been made in compliance with this section. All
14 such records shall be maintained for at least five years after
15 payment is made or the completion of the appraisal service,
16 whichever is later.

17 Sec. 14. NEW SECTION. 543E.14 Appraiser independence —
18 compensation.

19 1. An appraisal management company registered under
20 this chapter shall take all reasonable steps to assure
21 that appraisals are conducted independently and free from
22 inappropriate influence or coercion pursuant to the appraisal
23 independence standards established under section 129E of the
24 federal Truth in Lending Act, including the requirements for
25 the payment of reasonable and customary fees, and in compliance
26 with the independence, objectivity, and impartiality provisions
27 of section 543D.18, subsections 1 and 2, and section 543D.18A.

28 2. An appraisal management company shall compensate
29 appraisers at a rate that is reasonable and customary for
30 appraisal services being performed in the market area of the
31 property being appraised in accordance with federal law.

32 Sec. 15. NEW SECTION. 543E.15 Prohibited acts.

33 An appraisal management company registered under this
34 chapter, or an employee, owner, director, controlling person,
35 or other agent of an appraisal management company, shall not

1 do any of the following:

2 1. Require an appraiser to indemnify an appraisal
3 management company or hold an appraisal management company
4 harmless for any liability, damage, losses, or claims arising
5 out of the services performed by the appraisal management
6 company, and not the services performed by the appraiser.

7 2. Alter, modify, or otherwise change a completed appraisal
8 report submitted by an appraiser without the appraiser's
9 written consent.

10 3. Require that an appraiser provide the appraisal
11 management company with the appraiser's digital or electronic
12 signature, seal, or certification, or any password or other
13 form of security intended to prevent persons other than the
14 appraiser from affixing the appraiser's digital or electronic
15 signature, seal, or certification on a completed appraisal
16 report.

17 4. Remove an appraiser from an appraiser panel without prior
18 written notice that identifies the basis for removal. Upon
19 request or in conjunction with an examination, an appraisal
20 management company shall forward to the administrator copies
21 of such notices issued to an appraiser located or certified in
22 Iowa.

23 5. Require an appraiser to modify any aspect of an appraisal
24 report other than through a request permitted under section
25 543D.18A, subsection 4.

26 6. Require an appraiser to perform an appraisal assignment
27 if the appraiser has notified the appraisal management company
28 that, in the appraiser's own professional judgment, any of the
29 following apply:

30 a. The appraiser does not have the necessary competence or
31 expertise for the specific geographic area or type of property
32 to be appraised.

33 b. The timeframe under which the appraisal assignment is
34 to be performed is insufficient for the appraiser to meet all
35 relevant legal and professional obligations.

1 7. Require, either knowingly or through lack of reasonable
2 diligence, an appraiser to take any action that would violate
3 the uniform standards of professional appraisal practice, or
4 any provision of chapter 543D or rule adopted pursuant thereto.

5 8. Prohibit an appraiser from disclosing the fee paid to the
6 appraiser for appraisal services in the appraisal report.

7 9. Prohibit or inhibit lawful communications between the
8 appraiser and the lender, a real estate salesperson or broker,
9 or any other person from whom the appraiser, in the appraiser's
10 own professional judgment, believes information obtained would
11 be relevant to the appraisal assignment.

12 10. Condition payment of all or any part of an appraiser's
13 fee or the appraisal management company's fee on a particular
14 outcome, including but not limited to any of the following
15 outcomes:

16 a. A loan closing.

17 b. A specific dollar amount in an appraisal report.

18 c. An outcome that would violate section 543D.18, subsection
19 2, or section 543D.18A, subsection 1.

20 11. Engage in any acts or practices that violate section
21 543E.14.

22 Sec. 16. NEW SECTION. 543E.16 Display of registration
23 number.

24 An appraisal management company registered under this
25 chapter shall be issued a unique registration number and shall
26 include its registration number in any record, such as an
27 engagement letter, order, or agreement, in which the appraisal
28 management company contracts with an appraiser to perform an
29 appraisal assignment involving real estate located in this
30 state.

31 Sec. 17. NEW SECTION. 543E.17 Grounds for disciplinary
32 action.

33 1. After notice and hearing, the administrator may
34 revoke, suspend, or refuse to issue, renew, or reinstate
35 a registration; reprimand, censure, or limit the scope of

1 practice of any registrant; impose a civil penalty not to
2 exceed ten thousand dollars per violation; require remedial
3 action; or place any registrant on probation; all with or
4 without terms, conditions, or in combinations of remedies, for
5 any one or more of the following reasons:

6 *a.* Fraud or deceit in obtaining registration, which may also
7 result in permanent revocation of the registration.

8 *b.* Dishonesty, fraud, or gross negligence in the provision
9 of appraisal management services.

10 *c.* A violation of this chapter or implementing rules by
11 the appraisal management company or by an employee, owner,
12 director, controlling person, or other agent of the appraisal
13 management company.

14 *d.* Conviction of a felony or other indictable offense, any
15 element of which is dishonesty, deception, or fraud, or is
16 otherwise related to the performance of appraisal management
17 services, under the laws of any state or the United States.

18 *e.* Cancellation, revocation, suspension, or refusal to renew
19 the authority to practice as an appraisal management company,
20 or the acceptance of the voluntary surrender of a registration
21 to practice as an appraisal management company to conclude a
22 disciplinary investigation or action, by any other state, a
23 federal agency, or foreign authority for any cause other than
24 failure to pay appropriate fees in the other jurisdiction.

25 *f.* A violation of section 272C.10.

26 2. When determining whether to initiate a disciplinary
27 proceeding against an appraisal management company based
28 on actions or omissions by an employee, owner, director,
29 controlling person, or other agent of the appraisal management
30 company, the administrator shall take into consideration all
31 of the following:

32 *a.* Whether the appraisal management company took reasonable
33 steps to prevent the violation.

34 *b.* Whether the violation was or could have been discovered
35 by the appraisal management company upon reasonable inquiry.

1 *c.* What steps the appraisal management company took upon
2 discovering the violation.

3 *d.* Whether the violation could have been avoided had the
4 appraisal management company established the systems or other
5 procedures required under this chapter.

6 *e.* Whether the violation is an isolated matter or more
7 systemic to the appraisal management company's performance.

8 Sec. 18. NEW SECTION. 543E.18 Unlawful practice —
9 complaints and investigations — remedies and penalties.

10 1. If, as the result of a complaint or otherwise, the
11 administrator believes that a person has engaged, or is about
12 to engage, in an act or practice that constitutes or will
13 constitute a violation of this chapter, the administrator may
14 make application to the district court for an order enjoining
15 such act or practice. Upon a showing by the administrator that
16 such person has engaged, or is about to engage, in any such act
17 or practice, an injunction, restraining order, or other order
18 as may be appropriate shall be granted by the district court.

19 2. The administrator may investigate a complaint or
20 initiate a complaint against a person who is not registered
21 under this chapter to determine whether grounds exist to make
22 application to the district court pursuant to subsection 1 or
23 to issue an order pursuant to subsection 3, and in connection
24 with such complaint or investigation may issue subpoenas to
25 compel witnesses to testify or persons to produce evidence
26 consistent with the provisions of section 272C.6, subsection
27 3, as needed to determine whether probable cause exists to
28 initiate a proceeding under this section or to make application
29 to the district court for an order enjoining a violation of
30 this chapter.

31 3. In addition to or as an alternative to making application
32 to the district court for an injunction, the administrator may
33 issue an order to a person who is not registered under this
34 chapter to require compliance with this chapter and may impose
35 a civil penalty against such person for any violation specified

1 in subsection 4 in an amount up to ten thousand dollars for
2 each violation. All civil penalties collected pursuant to this
3 section shall be deposited in the housing trust fund created
4 in section 16.181. An order issued pursuant to this section
5 may prohibit a person from applying for registration under this
6 chapter or certification or registration under chapter 543D.

7 4. The administrator may impose a civil penalty against a
8 person who is not registered under this chapter for any of the
9 following:

10 a. A violation of section 543E.4.

11 b. A violation of section 543D.18A, subsection 1.

12 c. Fraud, deceit, or deception, through act or omission,
13 in connection with an application for registration under this
14 chapter.

15 5. The administrator, before issuing an order under
16 this section, shall provide the person written notice and
17 the opportunity to request a hearing. The hearing must be
18 requested within thirty days after receipt of the notice
19 and shall be conducted in the same manner as provided for
20 disciplinary proceedings involving a registrant under this
21 chapter.

22 6. A person aggrieved by the imposition of a civil penalty
23 under this section may seek judicial review pursuant to section
24 17A.19.

25 7. If a person fails to pay a civil penalty within thirty
26 days after entry of an order imposing the civil penalty, or
27 if the order is stayed pending an appeal, within ten days
28 after the court enters a final judgment in favor of the
29 administrator, the administrator shall notify the attorney
30 general. The attorney general may commence an action to
31 recover the amount of the penalty, including reasonable
32 attorney fees and costs.

33 8. An action to enforce an order under this section may be
34 joined with an action for an injunction.

35 Sec. 19. NEW SECTION. 543E.19 Surety bond.

1 1. The administrator shall require that an appraisal
2 management company be covered by a surety bond in the amount of
3 twenty-five thousand dollars.

4 2. The surety bond shall be in a form as prescribed by
5 the administrator. The administrator may, pursuant to rule,
6 determine requirements for such surety bonds as are necessary
7 to accomplish the purposes of this chapter. The requirements
8 for a surety bond shall only relate to liabilities, damages,
9 losses, or claims arising out of the appraisal management
10 services performed by the appraisal management company
11 involving real estate located in this state. The bond shall
12 provide that a person having a claim against an appraisal
13 management company may bring suit directly on the bond or the
14 administrator may bring suit on behalf of such person.

15 Sec. 20. NEW SECTION. 543E.20 Additional administrator
16 authority.

17 1. The administrator is vested with broad administrative
18 authority to administer, interpret, and enforce this chapter
19 and to promulgate rules implementing this chapter.

20 2. In addition to the duties and powers conferred upon the
21 administrator in this chapter, the administrator shall have
22 the authority to adopt such rules as are reasonably necessary
23 to assure the administrator's registration and supervision
24 of appraisal management companies comply with the minimum
25 requirements of 12 U.S.C. §3352 and related federal laws and
26 regulations, with respect to any of the following:

27 a. Reviewing and approving or denying an appraisal
28 management company's application for initial or renewal
29 registration.

30 b. Examining the books and records of an appraisal
31 management company operating in the state and requiring the
32 appraisal management company to submit reports, information,
33 and documents.

34 c. Verifying that the appraisers on an appraisal management
35 company's appraiser panel who perform appraisal assignments in

1 this state hold valid certificates issued under chapter 543D.

2 *d.* Conducting investigations of appraisal management
3 companies to assess potential violations of applicable
4 appraisal-related laws, regulations, rules, or orders.

5 *e.* Disciplining, suspending, terminating, or denying renewal
6 of the registration of an appraisal management company that
7 violates applicable appraisal-related laws, regulations, rules,
8 or orders.

9 *f.* Notwithstanding section 272C.6, subsection 4, reporting
10 an appraisal management company's violation of applicable
11 appraisal-related laws, regulations, rules, or orders, as well
12 as disciplinary and enforcement investigations and actions
13 and other relevant information about an appraisal management
14 company's operations, to the appraisal subcommittee.

15 *g.* Imposing requirements on appraisal management companies
16 that are mandated by federal law and regulations applicable
17 to appraisal management companies that are not exempt under
18 federal law, including any of the following:

19 (1) Registration and supervision requirements.

20 (2) Ownership limitations.

21 (3) Engaging only certified appraisers for federally
22 related transactions in conformity with all applicable
23 federally related transaction regulations.

24 (4) Establishing systems for engaging appraisers who are
25 competent and independent, and who are suited for the appraisal
26 assignments to which they are assigned based on education,
27 expertise, and experience.

28 (5) Directing appraisers to perform appraisal assignments
29 in accordance with the uniform standards of professional
30 appraisal practice.

31 (6) Establishing and complying with processes and controls
32 reasonably designed to ensure appraisal management companies
33 conduct appraisal management services in accordance with the
34 requirements of section 129E(a)-(i) of the federal Truth
35 in Lending Act, 15 U.S.C. §1639e(1)-(i), and regulations

1 thereunder including but not limited to the requirement that
2 appraisers who complete an appraisal in connection with a
3 consumer credit transaction secured by the principal dwelling
4 of the consumer be compensated with a customary and reasonable
5 fee.

6 *h.* Assessing, collecting, and forwarding to the appraisal
7 subcommittee national registry fees from appraisal management
8 companies registered under this chapter and from federally
9 regulated appraisal management companies.

10 3. The administrator may conduct periodic examinations of
11 applicants or registrants under this chapter as reasonably
12 necessary to assure compliance with all or specific provisions
13 of this chapter. All papers, documents, examination reports,
14 and other records relating to such examinations shall be
15 confidential as provided in section 272C.6, subsection 4,
16 except as provided in this section.

17 4. The administrator may adopt rules governing an
18 appraiser's use of associate real estate appraisers while
19 performing appraisal assignments subject to this chapter.
20 Associate real estate appraisers may provide appraisal services
21 under the supervision of a certified appraiser as provided
22 in chapter 543D and associated rules, but shall not be on an
23 appraiser panel of an appraisal management company.

24 5. The administrator may require a national criminal
25 history check through the federal bureau of investigation or,
26 if authorized by federal law or regulation, the nationwide
27 mortgage licensing system and registry, as defined in section
28 535D.3, when conducting background investigations under
29 this chapter. Except as inconsistent with the registry, the
30 following shall apply:

31 *a.* The administrator may require owners and controlling
32 persons who are subject to the background investigation
33 provisions of sections 543E.6 and 543E.7 to provide a full
34 set of fingerprints, in a form and manner prescribed by the
35 administrator. Such fingerprints, if required, shall be

1 submitted to the federal bureau of investigation through the
2 state criminal history repository for purposes of the national
3 criminal history check.

4 *b.* The administrator may also request and obtain,
5 notwithstanding section 692.2, subsection 5, criminal history
6 data for owners and controlling persons who are subject to the
7 background investigation provisions of sections 543E.6 and
8 543E.7. A request for criminal history data shall be submitted
9 to the department of public safety, division of criminal
10 investigation, pursuant to section 692.2, subsection 1.

11 *c.* The administrator shall inform such owners and
12 controlling persons of the requirement of a national criminal
13 history check or request for criminal history data and obtain
14 a signed waiver from the applicant, certificate holder, or
15 registrant prior to requesting the check or data.

16 *d.* The administrator may, in addition to any other fees,
17 charge and collect such amounts as may be incurred by the
18 administrator, the department of public safety, or the
19 federal bureau of investigation in obtaining criminal history
20 information. Amounts collected shall be considered repayment
21 receipts as defined in section 8.2.

22 *e.* Criminal history data and other criminal history
23 information relating to affected owners or controlling
24 persons, or their appraisal management companies obtained
25 by the administrator pursuant to this section shall remain
26 confidential. Such information may, however, be used by
27 the administrator in a registration denial, enforcement, or
28 disciplinary proceeding.

29 Sec. 21. Section 272C.1, subsection 6, Code 2016, is amended
30 by adding the following new paragraph:

31 NEW PARAGRAPH. *ag.* The superintendent of the division
32 of banking of the department of commerce in registering and
33 supervising appraisal management companies pursuant to chapter
34 543E.

35 DIVISION II

1 IOWA REAL ESTATE APPRAISER EXAMINING BOARD — SUPERVISION

2 Sec. 22. Section 543D.2, Code 2016, is amended by adding the
3 following new subsection:

4 NEW SUBSECTION. 11. “*Superintendent*” means the
5 superintendent of the division of banking of the department of
6 commerce or the superintendent’s designee.

7 Sec. 23. Section 543D.4, subsection 1, Code 2016, is amended
8 to read as follows:

9 1. A real estate appraiser examining board is established
10 within the ~~professional licensing and regulation bureau of the~~
11 banking division of the department of commerce. The board
12 consists of seven members, two of whom shall be public members
13 and five of whom shall be certified real estate appraisers.

14 Sec. 24. Section 543D.5, subsection 1, Code 2016, is amended
15 to read as follows:

16 1. The board shall adopt rules establishing uniform
17 appraisal standards and appraiser certification requirements
18 and other rules necessary to administer and enforce this
19 chapter and its responsibilities under chapter 272C, subject to
20 the superintendent’s supervision and authority under section
21 543D.23. The board shall consider and may incorporate any
22 standards required or recommended by the appraisal foundation
23 or by a federal agency with regulatory authority over appraisal
24 standards or the certification of appraisers for federally
25 related transactions.

26 Sec. 25. Section 543D.5, Code 2016, is amended by adding the
27 following new subsection:

28 NEW SUBSECTION. 5. Notwithstanding any provision to the
29 contrary, the provisions in section 546.10, subsections 6
30 through 12, shall apply to the board and to activities governed
31 under this chapter.

32 Sec. 26. Section 543D.6, subsection 2, Code 2016, is amended
33 to read as follows:

34 2. ~~Fees collected by the board shall be transmitted~~
35 ~~to the treasurer of state who shall deposit the fees in~~

1 ~~the general fund of the state.~~ All fees collected by the
 2 board shall be deposited into the department of commerce
 3 revolving fund created in section 546.12 and are appropriated
 4 to the superintendent on behalf of the board to be used to
 5 administer this chapter including but not limited to purposes
 6 such as examinations, investigations, and administrative
 7 staffing. Notwithstanding section 8.33, moneys retained by
 8 the superintendent pursuant to this section are not subject
 9 to reversion to the general fund of the state. However, the
 10 national registry fees the board collects on behalf of the
 11 appraisal subcommittee as defined in section 543E.3 shall be
 12 transmitted to the appraisal subcommittee in accordance with
 13 federal laws and regulations.

14 Sec. 27. Section 543D.22, subsection 1, Code 2016, is
 15 amended to read as follows:

16 1. The board may require a national criminal history check
 17 through the federal bureau of investigation for applicants
 18 for certification or registration, or for persons certified
 19 or registered, under [this chapter](#) if needed for credibility,
 20 to comply with federal law or regulation, or the policies of
 21 the appraisal qualification board of the appraisal foundation.
 22 The board may alternatively require a national criminal
 23 history check through the nationwide mortgage licensing system
 24 and registry, as defined in section 535D.3, when conducting
 25 background investigations under this section, if authorized by
 26 applicable federal law or regulation.

27 Sec. 28. NEW SECTION. **543D.23 Superintendent supervision**
 28 **and authority.**

29 1. The superintendent shall supervise the board and manage
 30 the board's budget and retained fees. The superintendent may
 31 exercise all authority conferred upon the board under this
 32 chapter and shall have access to all records and information
 33 to which the board has access. In supervising the board, the
 34 superintendent shall independently evaluate the substantive
 35 merits of actions recommended or proposed by the board which

1 may be anticompetitive and shall have the authority to review,
2 approve, modify, or reject all board actions including but not
3 limited to those taken in connection with any of the following:

- 4 *a.* Initial or reciprocal certification of real estate
5 appraisers, registration of associate real estate appraisers,
6 and temporary practice permits.
- 7 *b.* Disciplinary investigations and proceedings.
- 8 *c.* Investigations and proceedings under section 543D.21.
- 9 *d.* Rulemaking, including orders on petitions for rulemaking.
- 10 *e.* Orders on petitions for declaratory orders or waivers or
11 variances.

12 2. A person aggrieved by any final action of the board taken
13 under this chapter shall not have exhausted administrative
14 remedies until the person has appealed the action to the
15 superintendent and the superintendent has issued a final
16 decision or order.

17 3. The superintendent shall adopt rules to implement this
18 section.

19 Sec. 29. Section 546.3, subsection 1, Code 2016, is amended
20 to read as follows:

21 1. The banking division shall regulate and supervise banks
22 under [chapter 524](#), debt management licensees under chapter
23 533A, money services under [chapter 533C](#), delayed deposit
24 services under [chapter 533D](#), mortgage bankers and brokers
25 under [chapter 535B](#), regulated loan companies under chapter
26 536, and industrial loan companies under [chapter 536A](#), real
27 estate appraisers under chapter 543D, and appraisal management
28 companies under chapter 543E, and shall perform other duties
29 assigned to the division by law. The division is headed by the
30 superintendent of banking who is appointed pursuant to section
31 524.201. The state banking council shall render advice within
32 the division when requested by the superintendent.

33 Sec. 30. Section 546.10, subsection 1, paragraph f, Code
34 2016, is amended by striking the paragraph.

35 Sec. 31. Section 546.10, subsection 5, Code 2016, is amended

1 to read as follows:

2 5. Fees collected under ~~chapters 542, 542B, 543B, 543D,~~
3 ~~544A, 544B,~~ and ~~544C~~ shall be paid to the treasurer of state
4 and credited to the general fund of the state. All expenses
5 required in the discharge of the duties and responsibilities
6 imposed upon the professional licensing and regulation bureau
7 of the banking division of the department of commerce, the
8 administrator, and the licensing boards by the laws of this
9 state shall be paid from moneys appropriated by the general
10 assembly for those purposes. All fees deposited into the
11 general fund of the state, as provided in ~~this subsection,~~
12 shall be subject to the requirements of ~~section 8.60.~~

13 Sec. 32. EFFECTIVE DATE. This Act takes effect on January
14 1, 2017.

15 EXPLANATION

16 The inclusion of this explanation does not constitute agreement with
17 the explanation's substance by the members of the general assembly.

18 This bill requires the superintendent of the banking
19 division of the department of commerce to regulate appraisal
20 management companies and modifies provisions applicable to the
21 Iowa real estate appraiser examining board.

22 The bill provides definitions relating to the regulation of
23 appraisal management companies (AMCs).

24 The bill prohibits a person from conducting business or
25 advertising itself as an AMC without first registering with the
26 administrator, defined as the superintendent of banking.

27 The bill requires an AMC to designate a controlling person
28 to be the main contact between the administrator and the AMC
29 and to be responsible for compliance with the bill. The
30 controlling person and any person who owns more than 10 percent
31 of an AMC must be found to be of good moral character and submit
32 to a background investigation.

33 The bill requires that the AMC application for registration
34 and registration renewal contain its contact information,
35 agent for service of process, owners, controlling person,

1 appraiser panel, appraisers, and appraisal management
2 services, information to assure compliance with the uniform
3 standards of professional appraisal practice (USPAP), and
4 any other additional information needed as determined by
5 the administrator. The administrator may require periodic
6 disclosures of changes impacting registration.

7 The bill requires the administrator to establish fees
8 by rule. All fees shall be deposited into the department
9 of commerce revolving fund and are appropriated to the
10 administrator. Appropriated moneys are not subject to
11 reversion to the state general fund.

12 The bill requires an AMC to ensure that its appraisers
13 comply with USPAP and implement a review system to monitor such
14 compliance. An AMC that has a reasonable basis to believe
15 that an appraiser or another AMC has failed to comply with
16 applicable law shall refer the matter to the administrator. An
17 appraiser in the appraiser panel of an AMC who has a reasonable
18 basis to believe the AMC is in violation of the bill shall
19 refer the matter to the administrator.

20 The bill requires an AMC to keep a detailed record of all
21 its appraiser services and the identity of the appraiser who
22 performed the service for at least five years. An AMC must pay
23 an appraiser for the completion of an appraiser service within
24 45 days of completion and keep detailed records of payment for
25 at least five years.

26 The bill requires an AMC to take all reasonable steps to
27 assure that appraisals are conducted independently and without
28 inappropriate influence or coercion pursuant to federal and
29 state law. An AMC must compensate appraisers at a reasonable
30 and customary rate.

31 The bill prohibits an AMC, or an employee or other agent
32 of an AMC, from doing any of the following: requiring an
33 appraiser to indemnify an AMC for liability for the services
34 performed by the AMC; modifying a completed appraisal
35 report without the appraiser's written consent; requiring an

1 appraiser to provide the appraiser's identification or security
2 information to an AMC other than to affix on a completed
3 appraisal report; removing an appraiser from an appraiser
4 panel without written notice; requiring an appraiser to modify
5 an appraiser report other than what is permitted under Code
6 chapter 543D; requiring an appraiser to perform an appraisal
7 if the appraiser notified the AMC that the appraiser does not
8 have the necessary competence or the timeframe is insufficient;
9 requiring an appraiser to violate USPAP or Code chapter 543D
10 or its implementing rules; prohibiting an appraiser from
11 disclosing the appraiser's fee; prohibiting communications
12 relevant to an appraisal; conditioning payment to an appraiser
13 on a loan closing, a specific dollar amount, an outcome that
14 would violate Code section 543D.18(2), or 543D.18A(1); or
15 engaging in any acts or practices that violate Code section
16 543E.14.

17 The bill authorizes the administrator to discipline an AMC
18 for fraud or deceit in obtaining registration, dishonesty, or
19 gross negligence in providing appraisal management services;
20 violating the bill; being convicted of a felony related to
21 fraud or appraisal management services; being disciplined
22 to practice as an AMC in any jurisdiction for a substantive
23 reason; or violating Code section 272C.10. The board may,
24 after notice and hearing, revoke, suspend, or refuse to issue,
25 renew, or reinstate a registration; reprimand, censure, or
26 limit the scope of practice of a registrant; impose a civil
27 penalty of no more than \$10,000 per violation; require remedial
28 action; or place an AMC on probation.

29 The bill allows the administrator to seek an injunction
30 from the district court upon belief that a person has or is
31 about to engage in a violation of the bill. The administrator
32 is authorized to investigate or initiate complaints against
33 nonregistered persons. The administrator is also authorized
34 to issue an order to a person not registered and may impose a
35 civil penalty not to exceed \$10,000 for each violation of Code

1 section 543E.4 or 543D.18A(1), or fraud or deceit in applying
2 for registration. All civil penalties shall be deposited in
3 the housing trust fund created in Code section 16.181.

4 The bill requires an AMC to be covered by a surety bond in
5 the amount of \$25,000 to cover liabilities, damages, losses, or
6 claims arising out of the AMC's appraisal management services
7 in this state.

8 The bill provides the administrator with broad authority
9 to implement the bill and adopt necessary rules. The
10 administrator may also conduct periodic examinations of
11 registrants, adopt rules governing an appraiser's use of
12 associate real estate appraisers, and require criminal history
13 and background investigations.

14 The bill provides the superintendent of banking with
15 supervisory authority over the real estate appraiser board
16 established in Code chapter 543D to regulate real estate
17 appraisers. The superintendent shall independently evaluate
18 the actions of the board and have the authority to review,
19 approve, modify, or reject a board action. The superintendent
20 shall also manage the board's budget and retained fees.

21 The bill makes several changes to current law to provide
22 the superintendent with regulatory authority over AMCs and
23 supervisory authority over the real estate appraiser board.

24 The bill adds the superintendent to the list of defined
25 licensing boards in Code section 272C.1. The bill subjects
26 the real estate appraiser board's rulemaking authority
27 to the supervision of the superintendent in Code section
28 543D.5. The bill applies Code sections 546.10, subsections
29 6 through 12, to the appraiser board in Code section 543D.5,
30 to provide the professional licensing and regulation bureau
31 with regulatory powers over the appraiser board. The bill
32 requires the appraiser board's collected fees to be deposited
33 in the department of commerce revolving fund created in Code
34 section 546.12 and are appropriated to the superintendent
35 on behalf of the board in Code section 543D.6. The bill

1 expands the appraiser board's authority to require background
2 investigations in Code section 543D.22, subsection 1. The
3 bill adds real estate appraisers under Code chapter 543D and
4 AMCs under Code chapter 543E to the list of professions or
5 entities regulated by the banking division in Code section
6 546.3, subsection 1. The bill also makes other conforming Code
7 changes.

8 The bill takes effect January 1, 2017.